

REMARKS

A final Office Action was mailed in the above-captioned application on April 24, 2008. Claims 1, 3, and 5-20 were pending in the application. Claims 1, 3, and 5-20 were rejected. An Amendment and Response document was submitted in response to the Office Action on June 23, 2008. An Advisory Action was mailed on July 16, 2008. The Advisory Action indicated that the claim amendments would be entered, but did not place the application in condition for allowance. This Amendment and Remarks document makes further amendments to claim 1 and cancels claims 11-17. This document is being submitted as the required submission with a Request for Continued Examination under 37 C.F.R. § 1.114.

The Advisory Action

The Advisory action states that the amendments to claims 1 and 11 fail to require that the cell-containing sample be affixed, i.e., immobilized directly to the support. With regard to Claim 11, the Advisory action states that the claim merely states an intended use and does not patently distinguish the product from the prior art. The Advisory action also states that the claims remain rejected for the reasons set forth in the final Office action dated April 24, 2008.

Rejections Under 35 U.S.C. § 102(e)

Claims 1, 3, 9-10 and 19 were rejected under 35 U.S.C. § 102(e) as being anticipated by Chu (U.S. Patent No. 6,703,247). Applicants respectfully traverse.

A *prima facie* case of anticipation requires that a single publication teach, either expressly or inherently, each and every element or limitation of the claim, including any functional limitations. M.P.E.P. § 2131. According to the Office, Chu teaches “fixed cells ‘in’ a support having divided compartments.” Office Action, page 4. Claim 1 has been amended to clarify that a cell-containing sample is fixed directly on divided compartments of a support. Applicants respectfully submit that this claim element is not disclosed or suggested by Chu.

Chu, at best, discloses the fixation of cell samples to slides, which may in turn be placed in other vessels for further analyses. As recognized by the Examiner, Chu does not teach or suggest fixing samples directly on the compartments of the support. Office Action, page 4. Claims 1, 3, 9-10 and 19, as amended, now recite this claim element.

Thus, for at least the reasons discussed above, Chu does not disclose or suggest each and every element of claims 1, 3, 9-10 and 19. Accordingly, Chu does not anticipate claims 1, 3, 9-10 and 19, and Applicants respectfully request that this rejection be withdrawn.

Rejections Under 35 U.S.C. § 102(b)

Claims 1, 3, 5-6, 9-10 and 19-20 remain rejected under 35 U.S.C. § 102(b) as being anticipated by Blumenfeld et al. (U.S. Patent No. 6,228,634). Because Blumenfeld et al. does not teach each and every element of the pending claims, Applicants respectfully traverse.

As with Chu, the Office contends that Blumenfeld et al. discloses fixing a cell-containing sample in divided compartments of a support. However, the Examiner also recognized that Blumenfeld et al. does not teach or suggest fixing samples directly to the compartments of the support. Office Action, page 6.

As noted above, Claim 1 now recites that the cell-containing sample is fixed directly on divided compartments of a support. As with Chu, Blumenfeld et al. does not disclose or suggest each and every element of the pending claims. Thus, Blumenfeld et al. does not anticipate claims 1, 3, 5-6, 9-10 and 19-20.

Claims 11-17 were rejected under 35 U.S.C. § 102(b) as being anticipated by Crouch et al. (U.S. Patent No. 6,599,711). Claims 11-17 have been cancelled, rendering the rejection moot.

Thus, for at least the reasons discussed above, Blumenfeld et al. and Crouch et al. do not anticipate the amended claims. Accordingly, Applicants respectfully request that all rejections under 35 U.S.C. § 102(b) be withdrawn.

Rejections Under 35 U.S.C. § 103(a)

Claims 7-8 remain rejected under 35 U.S.C. § 103(a) as obvious over Blumenfeld et al. in view of Stapleton et al. (U.S. Patent No. 6,103,192). Claims 11-17 were rejected as obvious over Chu or Blumenfeld et al. in view of Krystosek et al. (U.S. Patent No. 5,264,343). Finally, claim 18 was rejected under 35 U.S.C. § 103(a) as obvious over Chu or Blumenfeld et al. in view of Krystosek et al. and Saunders. Claim 18 was previously canceled. Claims 11-17 have been cancelled, rendering the rejection moot. Because neither Chu nor Blumenfeld et al., whether considered alone or in combination with Stapleton et al. or Krystosek et al., teach each and every element of claims 7-8, Applicants respectfully traverse.

A *prima facie* case of obviousness has three distinct requirements. First, the references must teach or suggest every claim element. M.P.E.P. §§ 2142 and 2143.03. Second, there must be a motivation to modify or combine the teachings of the cited references. M.P.E.P. §§ 2143 and 2143.01. Third, there must be a reasonable expectation of success in performing the modified or combined teachings of the references. M.P.E.P. § 2143.02.

After the claim amendments set forth above, claims 7-8 now each indirectly recite that a cell-containing sample is fixed directly on divided compartments of a support. As discussed above, neither Chu nor Blumenfeld et al. teach or suggest this claim element. Likewise, Stapleton et al. Krystosek et al. and Saunders do not teach or suggest this claim element.

Therefore, even combining the teachings of Chu or Blumenfeld et al. with Stapleton et al. or Krystosek et al., one does not arrive at the invention recited in the amended claims. Because none of these references, alone or combined, teach each and every element of claims 7-8, Applicants submit that claims 7-8 are patentable over the cited references. Applicants thus respectfully request that all rejections under 35 U.S.C. § 103(a) be withdrawn.

Closing Remarks

Applicant believes that the pending claims are in condition for allowance. If it would be helpful to obtain favorable consideration of this case, the Examiner is encouraged to call and discuss this case with the undersigned.

This constitutes a request for any needed extension of time and an authorization to charge all fees therefore to deposit account No. 19-1970, if not otherwise specifically requested. The undersigned hereby authorizes the charge of any fees created by the filing of this document or any deficiency of fees submitted herewith to be charged to deposit account No. 19-1970.

Respectfully submitted,

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